

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA

KS STATEBANK, a Kansas banking
corporation,

Plaintiff

v.

BOGGS RUN VOLUNTEER FIRE
DEPARTMENT, INCORPORATED,
a West Virginia nonprofit corporation,

Defendant

ELECTRONICALLY
FILED
Jul 25 2019
U.S. DISTRICT COURT
Northern District of WV

Civil Action No. 5:19-CV-227

Judge Bailey

VERIFIED COMPLAINT

The Plaintiff, KS StateBank (“**Bank**” or the “**Plaintiff**”), states as follows for its Complaint against the Defendant, Boggs Run Volunteer Fire Department, Incorporated (“**Defendant**”).

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business located in Manhattan, Kansas.

2. Defendant is a nonprofit corporation organized and existing under the laws of the State of West Virginia, with its principal place of business located in Marshall County, West Virginia.

3. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §1332(a)(1) because there is complete diversity between the Plaintiff and the

Defendant and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in this judicial district.

FACTUAL BACKGROUND

5. On or about November 1, 2016, Defendant executed and delivered to Plaintiff an Equipment Financing Agreement which evidenced a loan by Plaintiff to Defendant in the original principal amount of One Hundred Fifteen Thousand Six Hundred Fifty Dollars (\$115,650) (the “**Financing Agreement**”) so that Defendant may purchase the Collateral, as defined below. A copy of the Financing Agreement is attached hereto as **Exhibit A**.

6. Pursuant to Section 6.02 of the Financing Agreement, to secure the payment and performance of Defendant’s obligations under the Financing Agreement, Defendant granted Plaintiff a security interest in, and lien against, Defendant’s Equipment listed on Exhibit A to the Financing Agreement, consisting of one (1) 2012 Dodge Ram Fire Rescue Truck (VIN 3C7WDNEL1CG211032) and one (1) KME 1993 Renegade 1500/1250 Fire Truck (VIN 1K9AF4280PN058725), as well as all additions, attachments, repairs, replacements, restorations, modifications, and improvements thereto, and all proceeds therefrom (collectively, the “**Collateral**”).

7. Plaintiff perfected its security interest in the Collateral by having its name listed as first lienholder on the Certificates of Title issued for the Collateral by the West Virginia Division of Motor Vehicles. Copies of the Certificates of Title are attached hereto as **Exhibit B**.

8. Defendant defaulted under the terms of the Financing Agreement by failing to tender the monthly installment due and owing for November 1, 2018.

9. Because of the Defendant's default, Plaintiff exercised its right under the Financing Agreement to accelerate the remaining balance due and owing under the Financing Agreement.

COUNT I
(Breach of Contract)

10. Plaintiff incorporates the allegations of each of the foregoing paragraphs of the Complaint as if fully restated herein.

11. The Financing Agreement constitutes a valid and enforceable contract between Plaintiff and Defendant.

12. Plaintiff has performed all of its obligations pursuant to the Financing Agreement.

13. Defendant defaulted under the Financing Agreement by failing to make payments as and when required under the Financing Agreement, which constitutes a breach of contract.

14. Because of the Defendant's default, Plaintiff has the right, under the terms of the Financing Agreement, to immediately foreclose upon and take possession of the Collateral.

15. As a direct and proximate result of the Defendant's breach, Plaintiff has been and continues to be damaged.

16. Pursuant to the Financing Agreement, as of July 18, 2019, Defendant is indebted to Plaintiff in the amount of One Hundred Three Thousand Three Hundred Twenty-Seven and 60/100 Dollars (\$103,327.60), which consists of unpaid principal of Ninety-Six Thousand Two Hundred Twenty-Five and 14/100 Dollars (\$96,225.14) and accrued but unpaid interest of Seven Thousand One Hundred Two and 46/100 Dollars (\$7,102.46).

17. Interest continues to accrue on the indebtedness evidenced by the Financing Agreement at a rate equal to 5.3% *per annum*.

18. In addition, pursuant to Section 6.01 and Section 9.02(b) of the Financing Agreement, title to the Collateral transferred to the Plaintiff, and Plaintiff is entitled to possession of the Collateral as a result of Defendant's breach.

19. Finally, pursuant to Section 9.02(c) of the Financing Agreement, Plaintiff is entitled to recover from Defendant all costs incurred by Plaintiff in the enforcement of the Financing Agreement, including, but not limited to, reasonable attorneys' fees.

WHEREFORE, Plaintiff, KS StateBank, respectfully requests that this Court grant it judgment against Defendant Boggs Run Volunteer Fire Department, Incorporated, as follows:

(a) That this Court order Defendant to immediately relinquish and surrender absolute possession of the Collateral to Plaintiff, without further delay;

(b) That this Court award Plaintiff the sum of One Hundred Three Thousand Three Hundred Twenty-Seven and 60/100 Dollars (\$103,327.60), plus interest thereon at the

rate of 5.3% *per annum* from July 18, 2019, to the date of judgment, and post-judgment interest thereafter at the statutory rate from the date of judgment until satisfied;

(c) That this Court award Plaintiff its attorneys' fees and costs associated with the enforcement of the Financing Agreement; and

(d) That this Court award Plaintiff such other and further relief as the Court may deem appropriate.

DATED: July 25, 2019

KS STATEBANK, a Kansas banking corporation

BY SPILMAN THOMAS & BATTLE, PLLC

/s/ Travis A. Knobbe

Travis A. Knobbe (WV State Bar # 13123)

Spilman Thomas & Battle, PLLC

One Oxford Centre, Suite 3440

301 Grant Street

Pittsburgh, PA 15219

(T): 412.325.3311

(F): 412.325.3324

E-mail: tknobbe@spilmanlaw.com

-and-

W. Eric Gadd (WV State Bar #9377)

1233 Main Street, Suite 4000

P.O. Box 831

Wheeling, WV 26003

(T): 304.230.6977

(F): 304.230.6951

E-mail: egadd@spilmanlaw.com